No. 2799

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

YEE CHUNG,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

APPELLANT'S REPLY BRIEF.

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The Judge of the Court below, in his memorandum of opinion (Tr. 10) said:

> "I had occasion in an oral opinion delivered in this Court late in January of last year, in the case of United States v. Jee Jan, to indicate my views as to the amount of evidence that ought to be produced in behalf of a person of Chinese descent, in one of these deportation cases, in order that the requirement of the statute that the Court should be satisfied, might be had."

Counsel for appellant were unable to find any record of such decision until it appeared in the brief of the appellee herein. That decision by the learned Judge of the Court below is set forth at length on pages 15 to 19 of the Government's Brief.

In the opinion of counsel for the appellant the language of that decision should not meet the approval of this Court. It indicates the barrier of judicial bias which the appellant in this case was required to scale, in order to remain within the boundary of this Country. With the utmost respect to the learned Judge of the Court below we feel that the language of his opinion goes far beyond anything ever countenanced by the Courts of this Country in disparagement of the testimony of a given race. We quote from the opinion:

> "In this connection I am perfectly free to admit that with me there is always a good deal of dubiousness about the testimony of *Chinamen in any case* * * * and the mere fact that a Chinaman testifies to a thing does not in my mind, because of my experience in such matters, prove to me that the fact is as testified to."

And setting forth the rule which governs him in weighing any Chinese case it is said:

> "All the time taking into consideration the fact which I believe to exist, as is commonly known and understood among those whose duty it is to administer and construe the laws and who have to do with Courts of Justice, *that the Chinese as a race*, when called upon in a matter in which Chinese are vitally interested, are disposed to be very free in their statements upon the witness stand."

The foregoing quotations amount to nothing less than this: That any Chinese resisting deportation must establish his case by witnesses other than Chinese. No matter with what candor or degree of

particularity the Chinese witnesses may testify, the adoption of a rule thus stringent would be equivalent to determining in every case in advance that a Chinese sought to be deported could not expect to prevail unless he could overthrow the burden imposed by statute by the testimony of reputable witnesses other than those of Chinese birth.

A Chinaman associates normally with people of his own race. It is with difficulty that he could call white witnesses in any case. If a Caucasian were arrested in the Chinese Republic and on resistance to deportation proceedings were to be told that he could not expect to prevail unless by the testimony of Chinese and were to be further told that the evidence of his own countrymen would be denounced in advance as unworthy of belief, he would probably find grave difficulty in resisting expulsion from the Country.

We respectfully urge upon this Court that the comprehensive language of the Judge of the Court below requires modification. That opinion denounces the testimony of the Chinese *as a race.* In one sweeping sentence it relegates to the limbo of perjury the testimony of a class composed of the inhabitants of a nation.

That such is not the true rule we entertain no doubt. That the testimony of a Chinese is to be weighed in the balance with the probabilities attending it and is to be accepted or rejected by its own

inherent weight when measured by the probabilities of the particular case is the law.

> "A Court is not at liberty, arbitrarily and without reason to reject or discredit the testimony of a witness upon the ground that he is a Chinaman, an Indian, a Negro or a White man. All people, without regard to race, color, creed or country, whether rich or poor, stand equal before the law. It is the duty of the Courts to exercise their best judgment, not their will, whim or caprice, in passing upon the credibility of every witness."

Woey Ho v. United States, 109 Fed. p. 890.

In this case, seven witnesses, unshaken by cross-examination, testified in the most positive manner and with minute detail of circumstances, the birth and life of the appellant.

If the testimony in this case was measured by the rule laid down in advance by the learned Judge of the Court below, that testimony might as well not have been introduced.

The only other matter contained in the brief of the Government calling for comment is the following remarkable statement:

> "It is believed that the inference is very clear that this man planted himself at River Station in Los Angeles and had a confederate notify the immigration officials so that he would be arrested and he would have an opportunity to judicially establish his nativity if possible."

This is a remarkable tribute to the strength of appellant's cause.

But to anyone at all familiar with the terror which enters Chinese hearts at thought of arrest, this statement of the United States attorney is incredible.

Dated, San Francisco,
November 15, 1916.

Respectfully submitted,

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